

COPY

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Skydive Myrtle Beach, Inc.,

Appellant,

vs.

Horry County

Respondent.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-26-4965

ORDER DENYING APPELLANT'S
MOTION TO
RECONSIDER DISMISSAL OF APPEAL

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AUG 24 2015

SC Court of Appeals

FILED
HORRY COUNTY
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MELANIE J. JENNINGS, CLERK
CLERK OF COURT

The matter comes before the Court upon Appellant Skydive Myrtle Beach, Inc.'s Rule 59(e) SCRCF Motion to Reconsider this Court's Order dated May 27, 2015, dismissing Appellant's appeal from an ejectment order issued by Magistrate Judge Christopher Arakas. After considering the Appellant's motion and supporting memorandum together with Respondent's Response in Opposition to Appellant's Motion to Reconsider, the Court has decided to deny Appellant's Motion to Reconsider.

Appellant claims Horry County's Space Use Permit could not replace a May 12, 2010, agreement between Appellant and Ramp 66 to provide parachute jumps from Grand Strand Airport. Under the Ramp 66 agreement, Appellant was permitted to use a minimum of 2500 square feet in the "bird hangar" during daylight hours for no rent. The Ramp 66 agreement was to remain in effect through Grand Strand Aviation's lease with Horry County Department of Airports. Grand Strand Aviation's lease with Horry County Department of Airports was scheduled to run through July 2020. Ramp 66 and Horry County Department of Airports terminated the lease in 2013. Thereafter, Horry County Department of Airports and Appellant

entered a new agreement/space use permit for Hangar 7 which superseded all previous agreements, including the Ramp 66 agreement. Appellant's right to occupy Hangar 7 under the space use permit ended under express terms of the space use permit on January 31, 2014.

In its motion to reconsider Appellant claims its agreement with Ramp 66 was in fact a sublease which could not be replaced by a space use permit. However, Appellant has omitted the fact that its claimed sublease was not recorded in accordance with the notice requirements of S.C. Code Ann. § 27-33-30. Appellant further omitted citing the provision in paragraph 18 of the Ramp 66 agreement which allowed the agreement to be changed in any way upon written agreement of both parties. Appellant overlooked the significance of the fact that the space use permit was a written agreement signed by Horry County as successor to Ramp 66 and also signed by Appellant.

Appellant misconstrued the Ramp 66 agreement to mean the agreement gave Appellant the exclusive right to occupy 6800 square feet of Hangar 7 at all times including non-daylight hours through July of 2020. There is nothing in the plain language of the Ramp 66 agreement to support such a construction. As found by the Court the space use permit constituted a change to the Ramp 66 agreement. The new agreement superseded the Ramp 66 agreement and the new agreement only permitted Appellant to occupy Hangar 7 until January 31, 2014. After January 31, 2014, Appellant's right to occupy Hangar 7 ended.

The bottom line is that Appellant's right to occupy Hangar 7 during daylight hours under the Ramp 66 agreement ended when Appellant signed the space use permit. The space use permit expressly provided that Appellant's right to occupy Hangar 7 ended on January 31, 2014. Without a valid written lease agreement, Appellant's eviction from Hangar 7 is a foregone conclusion.

Appellant's procedural claims.

Each of Appellant's procedural claims was addressed in the Court Order Appellant seeks to set aside. Respondent would point out that each error Appellant assigned to the Magistrate was an alleged error in the exercise of the Magistrate's discretion. Further, the only benefit Appellant would have received if the Magistrate had decided the procedural motions in favor of the Appellant was a delay in the proceedings. Respondent contends the end result would have been the same.

Appellant's claim that it was entitled to a jury trial because it requested a jury trial five days prior to the date of the scheduled hearing is improper. Under the Magistrate's rules of procedure, Appellant was required to request a jury trial five (5) working days before the date of the scheduled hearing. *SC R MAG CT Rule 13*. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. *Rule 6 SCRCP*. Even if the Court were to count Friday, July 18, 2014, and Wednesday July 23, 2014, (original date scheduled for trial) as part of the five (5) working days, Appellant's request for a jury trial was not timely or in compliance with the Magistrate Court Rules because, excluding Saturday and Sunday, Appellant's request for a jury trial was less than five (5) working days before the original date the trial was scheduled. *Rule 6 SCRCP & SC R MAG CT Rule 13*.

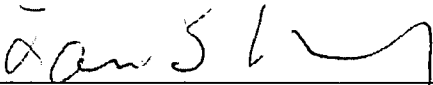
Appellant's Rule 12(b) (8) Motion

Appellant's Rule 12(b) (8) motion was properly denied. First, the circuit court lawsuit which Appellant claims should have caused the Magistrate eviction to be dismissed was not between the same parties. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 323, 701 S.E.2d 39, 45 (Ct. App. 2010). Appellant named Horry County, Horry County Department of Airports,

H. Randolph Haldi, Pat Apone, Tim Jackson and Jack Teal as defendants in the circuit court action. The Magistrate's eviction only involved Horry County and the Appellant. Second, Courts interpret the Rule 12(b) (8) narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b) (8). *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 106, 674 S.E.2d 524, 532 (Ct. App. 2009). In the circuit court proceeding, Appellant asserted fifteen separate causes of action for damages against the above named defendants. There was no eviction claim or defense in the circuit court action. Respondent contends that none of Appellant's fifteen causes of action were precisely or substantially the same as the eviction cause of action brought by the Respondent. Because the identities of the parties were not the same and the claims were not precisely or substantially the same, the Magistrate's denial of Appellant's Rule 12 (b) (8) motion was proper. *Id.*

NOW THEREFORE, for the reasons stated above and for the reasons stated in this Court's Order dated May 27, 2015, Appellant's Motion to Reconsider is hereby **DENIED**.

7-16, 2015



The Honorable Larry B. Hyman, Jr.
Judge Of The Fifteenth Judicial Circuit